

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NANCY CERUTTI, JAMES COFFMAN,
JOHN COSTABILE, MATTHEW DONALDSON,
ANTHONY GEORGIANA, DONALD MCKNIGHT,
LINDA MASSUCCI, MICHAEL MASSUCCI,
SHAUN CHRISTOPHER and JOHN ARISON,
on behalf of themselves and all
others similarly situated,

Plaintiffs

v.

FRITO LAY, INC.,

Defendant

CLASS ACTION

NO. 09-00022

Type of Pleading:

AMENDED COMPLAINT

Filed on behalf of Plaintiffs,
Nancy Cerutti, James
Coffman, John Costabile,
Matthew Donaldson,
Anthony Georgiana, Donald
McKnight, Linda Massucci,
Michael Massucci, Shaun
Christopher and John Arison
Counsel of Record for these Parties:

John R. Linkosky, Esquire
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AND NOW come the Plaintiffs by and through their counsel Joseph E. Fieschko, Esquire, John R. Linkosky, Esquire and John Linkosky & Assoc., and file this Amended Complaint and aver as follows:

NATURE OF THE ACTION

1. Plaintiffs Nancy Cerutti, James Coffman, John Costabile, Matthew Donaldson, Anthony Georgiana, Donald McKnight, Linda Massucci, Michael Massucci, Shaun Christopher and John Arison were employed by Defendant Frito Lay, Inc. (hereinafter "Frito") as route salespersons. Plaintiffs worked in Western Pennsylvania. Defendant Frito was at that time, and currently is, in the business of selling snack foods.
2. Throughout Plaintiffs' employment with Frito, Frito did not pay Plaintiffs or other similarly situated employees subject to the same policies, applicable minimum wages or overtime compensation as required under Pennsylvania statutes.
3. Accordingly, Plaintiffs and other similarly situated employees subject to the same

policies herein assert claims under the Pennsylvania Minimum Wage Act to collect unpaid wages and unpaid overtime compensation. The claims pursuant to Pennsylvania statutes are class actions pursuant to Pa. R. Civ. Pro. 1701 as an “opt-out” class action.

PARTIES

4. Plaintiff Nancy Cerutti resides at 256 McHaddon Road, Kittanning, Armstrong County, Pennsylvania. Plaintiff James resides at 9 McCune Avenue, Scottdale, Westmoreland County, Pennsylvania. Plaintiff John Costabile resides at 714 Bar Harbour Drive, Pittsburgh, Allegheny County, Pennsylvania. Plaintiff Matthew Donaldson resides at 798 South Fifth Street, Indiana, Indiana County, Pennsylvania. Plaintiff Anthony Georgiana resides at 34 Woodlawn Street, Uniontown, Fayette County, Pennsylvania. Plaintiff Donald McKnight resides at 439 Eden Drive, Monroeville, Allegheny County, Pennsylvania. Plaintiff Linda Massucci resides at 182 Oak Ridge Drive, Butler, Butler County, Pennsylvania. Plaintiff Michael Massucci resides at 1508 Fernledge Drive, Allison Park, Allegheny County, Pennsylvania. Plaintiff Shaun Christopher resides at 288 Jensen Hollow Road, Carmichaels, Greene County, Pennsylvania. Plaintiff John Arison resides at 290 Derrick Avenue, Uniontown, Fayette County, Pennsylvania.

5. The other Plaintiffs include, but are not necessarily limited to, all present and former employees of Frito employed in the state of Pennsylvania who were employed as route salespersons during the period from April 21, 2006 through the present, such as the named Plaintiffs, and other similarly situated employees in other occupations subject to the same policies, and who worked hours in excess of their scheduled and paid hours in many work weeks without receiving proper minimum wage and overtime compensation from Frito.

6. Defendant, Frito Lay, Inc., (hereinafter “Frito”), is a corporation maintaining a local headquarters at 1100 Thompson Industrial Park Road, Cranberry, Butler County,

Pennsylvania, and operates various other facilities in Western Pennsylvania where Plaintiffs were employed. Frito is in the business of selling and delivering snack foods in Pennsylvania and other states.

7. Plaintiffs were employed in the Commonwealth of Pennsylvania and, therefore, are entitled to the protections of the Pennsylvania Minimum Wage Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendant Frito because it has a place of business located at Smock, Fayette County, Pennsylvania, Plaintiff Georgiana was employed in Fayette County, Pennsylvania and all work performed by named Plaintiffs was performed in Pennsylvania.

9. Venue is proper in this judicial district pursuant because a substantial part of the events or omissions giving rise to the claims, occurred here.

FACTS

10. All named Plaintiffs have been employed by Frito between April 21, 2006 and the present.

11. As route salespersons, each of the named Plaintiffs were responsible for delivering snack foods to Frito's customers, consisting of approximately thirty-five to forty retail stores per route in Western Pennsylvania. Their job duties included loading their trucks, driving their trucks, arranging the Frito products on store shelves, replenishing sold stock and servicing sales made by others. Less than 20% of their time was spent on sales activities or activities related to their own sales. They received a weekly salary plus 7% of the value of product delivered. Since January of 2006, Plaintiffs have received bonus wages for hours worked in

excess of forty hours per week, but these bonuses were not paid to Plaintiffs in accordance with the Pennsylvania Minimum Wage Act.

12. During their period of employment by Frito, named Plaintiffs and other similarly situated employees of Frito, in many work weeks worked in excess of forty hours a week. However, Frito failed to accurately record all the hours worked by named Plaintiffs and other similarly situated employees of Frito, and failed to compensate named Plaintiffs and other similarly situated employees of Frito, for all hours which they worked.

13. This Action is a class action pursuant to Pa. R. Civ. Pro. § 1701 brought by Plaintiffs on behalf of themselves and others similarly situated and subject to the same policies of Frito.

Pennsylvania Minimum Wage Act Claim for violations of 43 P.S. § 333.104(c)

14. The averments set forth in paragraphs 1 through 13 are incorporated herein by reference as if fully set forth at length.

15. Named Plaintiffs and similarly situated employees of Frito were employees of Frito within the meaning of 43 P.S. § 333.103(h), while Frito was the employer of named Plaintiffs and similarly situated employees of Frito, within the meaning of 43 P.S. § 333.103(g).

16. Named Plaintiffs, and similarly situated employees of Frito, were entitled to be paid straight time their regular rate of pay for all hours worked up to forty in a work week, and overtime compensation at not less than one and one half times their regular rates of pay for all hours worked in excess of forty hours in a work week .pursuant to 43 P.S. § 333.104(c).

17. Frito violated 43 P.S. § 333.104(c) by not paying named Plaintiffs and similarly situated employees of Frito, overtime compensation due to them under the Pennsylvania

Minimum Wage Act even though they worked hours in excess of forty hours per week in many work weeks while employed by Frito. Frito's violations of 43 P.S. § 333.104(c) were willful.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and in favor of all other party Plaintiffs in an amount equal to their collective unpaid straight time and overtime compensation together with costs, liquidated damages and reasonable attorneys fees.

Respectfully submitted,

/s/John R. Linkosky

John R. Linkosky, Esquire

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/s/ Joseph E. Fieschko Jr.

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Pa. I.D. No. 28797

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412 281-2204

Counsel for Plaintiffs

VERIFICATION

I, Shaun Christopher, depose and say subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Date: 7-15-2009

Shaun Christopher

VERIFICATION

I, John Arison, depose and say subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Date:

7/20/09


